

## REMARKS

Claims 1 and 2 stand rejected. Claims 3-20 are newly added. Claims 1-20 are presently pending in the application. Favorable reconsideration in view of the following remarks is earnestly solicited.

The basis for newly added claims 3 and 4 can be found in paragraph [0024] or the specification. The basis for newly added claims 5, 6 and 19 can be found in paragraph [0030] of the specification. The basis for newly added claim 7 can be found in paragraph [0031] of the specification. The basis for newly added claim 8 can be found in paragraph [0036] of the specification. The basis for newly added claims 9-12 and 18 can be found in paragraph [0038] of the specification. The basis for newly added claim 13 can be found in paragraph [0039] of the specification. The basis for newly added claim 14 can be found in paragraph [0040] of the specification. The basis for newly added claim 15 can be found in paragraph [0043] of the specification. The basis for newly added claim 16 and 20 can be found in paragraph [0043] of the specification. The basis for newly added claim 17 can be found in paragraph [0044] of the specification.

### **Objection to the Disclosure:**

The Examiner has objected to the disclosure for the use of trademarks. Applicant has amended the specification to capitalize the indicated trademarks so to respect the proprietary nature of the marks.

### **Rejection under 35 U.S.C. § 102(b):**

The Examiner has rejected claims 1, 3, 4, 5 and 6 under 35 U.S.C. 102(b) as being anticipated by Mowrey-McKee et al. (U. S. 5,817,277). As the reference fails to teach the use of L-histidine it is requested that this rejection be reconsidered and withdrawn.

It appears that this rejection is issued in error as the only claims pending at the time of the office action dated January 2, 2009 were claims 1 and 2. Claims 3-6 are newly added by this amendment. However, for this response to be complete applicant submits the following remarks.

A claim is anticipated under 35 U.S.C. 102(b) only if each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art

reference. Verdegaal Bros. V. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Mowrey-McKee et al. fails to disclose a solution containing L-histidine as claimed. It is noted that the Examiner indicates on page 4 of the office action dated January 2, 2009 that Mowrey-McKee et al. does not teach the use of L-histidine. As the reference fails to teach all of the claimed limitations it cannot anticipate the instant claims. Therefore, it is requested that this rejection be reconsidered and withdrawn.

**Rejection under 35 U.S.C. § 103(a):**

The Examiner has rejected claims 1 and 2 under 35 U.S.C. 103(a) as being unpatentable over Mowrey-McKee et al. in view of Pollock et al. (U.S. 4,863,900). As neither reference teaches the use of L-histidine at the claimed concentration, and there lacks any motivation to combine the two references, it is requested that this rejection be reconsidered and withdrawn.

Neither reference, alone or in combination, teaches a solution containing between 0.01 and 1.0 percent by weight L-histidine as claimed. As discussed above, and as noted by the Examiner on page 4 of the January 2, 2009 Office Action, Mowrey-McKee et al. does not teach the use of L-histidine.

Pollock et al. further fails to teach the use of L-histidine within the claimed range. The Examiner indicates that Example XVII of the reference teaches 0.1mg of L-histidine in a 9.8 mg solution. However, this calculation is erroneous as Example XVII of Pollock et al. contains a total of 0.2 mg of L-histidine (0.1 mg of poly-L-histidine and 0.1 mg of synthetic L-histidine) the total L-histidine in the solution is substantially more than the claimed range. As neither reference teaches a solution containing L- histidine within the claimed range it is urged that the instant claims are patentable over the cited references.

There lacks any motivation to combine Mowrey-McKee et al. with Pollock et al. Mowrey-McKee et al. relates to a method for disinfecting a contact lens. The solution being suitable for the reduction of microorganisms, bacteria and fungi. Mowrey-McKee et al. makes no reference to reducing the transmissibility of viral infections as taught by Pollock et al. Further, Pollock et al. solely discloses reducing the transmissibility of viral infections and is silent regarding an phallic solution suitable for disinfecting a contact

lens. In fact, Pollock et al. does not disclose any solutions suitable for contact lenses. Therefore, it is urged that there lacks any motivation to combine the cited references and that this rejection be withdrawn.

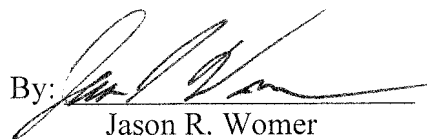
It is believed that the foregoing is a complete response to the Office Action and that the claims are in condition for allowance. Applicant requests that a timely Notice of Allowance be issued in this case.

Applicant appreciates the opportunity to call the Examiner but believes that this amendment to the claims and the forgoing remarks fully address the issues raised by the Examiner. On the other hand, the Examiner is invited to call the undersigned attorney if he has any matters to address that will facilitate allowance of the application.

In the event that Applicant has overlooked the need for an extension of time, additional extension of time, payment of fee, or additional payment of fee, Applicants hereby conditionally petition therefore and authorize that any changes be made to Deposit Account No.: 50-3010.

Respectfully submitted,

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